IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

ST.Rev..No. 212 of 2007

TA.314/2006 of KERALA SALES TAX APPELLATE TRIBUNAL, ADDL. BENCH, ERNAKULAM

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REVISION PETITIONER/RESPONDENT/ASSESSEE:

K.A. SADEEK,
MY MATER AGENCIES, ERNAKULAM.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENT/APPELLANT/REVENUE:

THE STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT,THIRUVANANTHAPURAM.

BY SR.. GOVERNMENT PLEADER SHRI MOHAMMED RAFIQ.

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 05/07/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

S.T.REV. NO. 212 OF 2007

Dated this the 5th July, 2007

O R D E R

H.L.DATTU, C.J.

This Sales Tax Revision arises under the provisions of the Kerala General Sales Tax Act (for short `KGST Act'). The assessment year in question is 2004-05. This revision is filed against the order passed by the Kerala Sales Tax Appellate Tribunal, Additional Bench, Ernakulam in T.A.No.314 of 2006, dated 25th August, 2006.

2. The question that is posed before this Court in this revision petition is whether commodities dealt with by the petitioner, who is a dealer in baby cycle, baby tricycle, pedaling car, baby car, baby rider, swing etc., would fall under Entry 161 of the First Schedule to the KGST Act or as unclassified items falling under Entry 177 of the First Schedule to the KGST Act.

3. The assessee, for the assessment year 2004-05, had filed annual return. The assessing authority, being of the opinion that the commodities sold by the assessee would fall under Entry 161 of the First Schedule to the KGST Act, had levied tax at the rate of 12%. Aggrieved by the said order, the assessee had carried the matter by way of appeal before the First Appellate Authority. The First Appellate Authority has conceded to the claim of the assessee and in his opinion, the commodities dealt with by the assessee are not toys which would fall under Entry 161 of the First Schedule to the KGST Act, but would be treated as unclassified items falling under Entry 177 of the First Schedule

to the KGST Act and the rate of tax would be 8%.

4. The State, being aggrieved by the aforesaid order passed by the First Appellate Authority, had carried the matter by way of second appeal before the Kerala Sales Tax Appellate Tribunal. The Tribunal, after considering Entry 161 of the First Schedule to the KGST Act and also the commodities dealt with by the assessee, has come to the conclusion that the First Appellate Authority was not justified in treating the commodities dealt with by the assessee as unclassified items falling under Entry 177 of the First Schedule to the KGST Act. Accordingly, the Tribunal has allowed the appeal and restored the order passed by the assessing authority. Being aggrieved by the said order passed by the Tribunal, the assessee is before us in this Sales Tax Revision.

5. The assessee has framed the following two questions of law for our consideration and decision. They are as under:

> "i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal is justified in observing that the assessee had not objected to the proposal to treat the goods as item taxable at 12% in the light of the fact that the Assessing Authority has referred to the objection filed, wherein the petitioner objected the proposal in detail. Is not the Appellate Tribunal order therefore basically erroneous?
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> ii) Whether on the facts and in the circumstances of the case, has not the Appellate Tribunal committed error in reversing the order of the First Appellate Authority without valid reason and in not writing a speaking order. Is it correct to say that the items dealt in are toys for the babies?"

6. Dr.K.B.Mohamedkutty, learned counsel appearing for the assessee, would vehemently contend before this Court that the commodities dealt with by the assessee can never be construed as toys of all kinds and, therefore, the First Appellate Authority was justified in treating the commodities dealt with by the assessee as items falling under Entry 177 of the First Schedule to the KGST Act. Therefore, submits that both the assessing authority as well as the Tribunal were not justified in treating the commodities sold by the assessee as items which would fall under Entry 177 of the First Schedule to the KGST Act.

7. Learned Government Pleader appearing for the Revenue sought to justify the impugned orders passed by the assessing authority as well as the Tribunal.

8. It is not in dispute that the assessee has engaged in the sale of baby cycle, baby tricycle, pedaling car, baby car, baby rider, swing etc..

9. Entry 161 of the First Schedule to the KGST Act is as under:

"Toys of all kinds including electrical and electronic toys".

The rate of tax prescribed is at 12%.

10. Entry 177 of the First Schedule to the KGST Act is a residuary entry. It speaks of all other goods not coming under any entry in any of the Schedules to the KGST Act. The rate of tax prescribed is at 8%.

11. Now the question before us is whether the commodities

dealt with by the assessee would fall under Entry 161 of the First Schedule to the KGST Act or as unclassified items coming under Entry 177 of the First Schedule to the KGST Act?

12. The legislature has used the expression “toys of all kinds” and including “electrical and electronic toys”.

13. The expression `toys', according to the dictionary meaning, is an article mainly intended for the amusement of children. The term 'toys' used in the tariff act, is to receive the signification ordinarily attributed to it in common usage unless evidence shows that it has a different trade signification. A toy is an object used to play. Toys are usually associated with children and pets, but it is not unusual for adult humans and some non-domesticated animals to play with toys. Many items are manufactured to serve as toys, but items produced for other purposes can also be used as toys. A child may pick up a household item and 'fly' it around pretending that it is an airplane, or an animal might play with a pinecone by batting at it, chasing it, and throwing it up in the air. Some toys are intended primarily as collector's items and are not to be played with.

14. The legislature by using the expression 'Toys of all kinds', has included 'all kinds of toys' which is conveniently could be used by a child. The materials from which it is made is immaterial for the purpose of this entry.

15. Since the commodities which the assessee dealt with are commodities which would come under 'toys of all kinds', we are of the opinion that both the assessing authority as well as the Tribunal were

justified in bringing to tax the commodities dealt with by the assessee as items which would fall under Entry 161 of the First Schedule to the KGST Act and not under Entry 177 of the First Schedule to the KGST Act. In that view of the matter, the questions of law raised by the assessee require to be answered against the assessee and in favour of the Revenue.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

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